

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TRUSTEES OF THE 1199/SEIU GREATER:
NEW YORK BENEFIT FUND, TRUSTEES OF:
THE 1199/SEIU GREATER NEW YORK:
PENSION FUND, TRUSTEES OF THE:
1199/SEIU GREATER NEW YORK:
EDUCATION FUND, TRUSTEES OF THE:
1199/SEIU GREATER NEW YORK CHILD:
CARE FUND, TRUSTEES OF THE 1199/SEIU:
GREATER NEW YORK JOB SECURITY:
FUND, and THE TRUSTEES OF THE:
1199/SEIU GREATER NEW YORK WORKER:
PARTICIPATION FUND, :

Civil Action No.
07 CV 9744 (DLC)

Plaintiffs,

v.

KINGSBRIDGE HEIGHTS REHABILITATION:
CARE CENTER, :

Defendant.

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AFFIDAVIT OF TIMOTHY WELLS

Timothy Wells, being duly sworn, states:

1. My name is Timothy Wells. I make this affidavit in support of plaintiffs' motion for summary judgment in this matter.

2. I am employed by the 1199 SEIU Benefit and Pension Funds. My title is Director of Contracts and Collections

3. My duties are to ensure that the contracts provide for correct Funds contribution rates, collect contributions, analyze contributions to the Funds, determine which employers are delinquent, and take appropriate action to collect the delinquencies.

4. There are a total of 17 individual fringe benefits funds within the 1199 SEIU Benefit and Pension Funds.

5. Among the fringe benefit funds which are within the 1199 SEIU family of funds are the 1199 SEIU Greater New York Benefit Fund, 1199 SEIU Greater New York Pension Fund, 1199 SEIU Greater New York Education Fund, 1199 SEIU Greater New York Child Care Fund, 1199 SEIU Greater New York Job Security Fund, and the 1199 SEIU Greater New York Worker Participation Fund (collectively, the "Greater Funds").

6. The Greater Funds are established and maintained pursuant to the Labor Management and Relations Act of 1947, 29 U.S.C. §186(c)(5).

7. The Greater Funds each are governed by a distinct set of trustees. Half of these trustees are appointed by a labor union, 1199 SEIU United Healthcare Workers East, ("1199") and half of these trustees are appointed by employers who have collective bargaining agreements with 1199.

8. The Greater Funds are employee benefit plans within the meaning of ERISA, 29 U.S.C. §§1002(2)(3). They are maintained for the purposes of providing medical benefits, retirement benefits, child care benefits, education benefits, and other benefits to eligible participants and their beneficiaries.

9. Monthly contributions to the Greater Funds are a percentage of payroll, and they are due on the 10th of the month following the month in which the wages are earned. Kingsbridge was most recently a party to the 2002 -2005 collective bargaining agreement between 1199 and the Greater New York Health Care Facilities Association, and that agreement, which is attached, specifies the relevant contribution rates for each of the Greater Funds.

10. Employees whose employers are subject to collective bargaining agreements which require Funds contributions are eligible for Funds benefits, as are their spouses and minor children.

11. For as long as Kingsbridge and 1199 were parties to a collective bargaining agreement, the 1199 – represented Kingsbridge employees were eligible for and received Funds benefits. Subsequent to the April 30, 2005 expiration of the most recent contract, Kingsbridge employees have remained eligible for and received Funds benefits, except for a three month period in 2006, and the period November 5, 2007 to the present. In these two periods, Benefit Fund benefits were terminated due to Kingsbridge's delinquencies.

12. Attached as Exhibit A to my Affidavit is a Statement of Position, ("SOP") for Kingsbridge Heights Rehabilitation Care Center ("Kingsbridge"). I note a recent development reflected on this SOP: On August 13, 2008, the Funds received payment from Kingsbridge for wages earned in December, 2006, and for all of the Funds except for the Benefit Fund for wages earned in November, 2006.

13. This SOP was prepared by Funds staff at my direction. It is based on information contained in the files of the Funds.

14. Normally, employers provide the Funds with monthly reports which set out the covered employees' wages and the Funds contributions due on these wages. When employers don't provide the Funds with monthly reports which detail the employees' earned wages and resulting Funds contributions, the Funds are forced to estimate the contributions due. Kingsbridge did not provide the Funds with employer reports for November, 2007, December, 2007, January, 2008 or February, 2008, so the

Funds had to estimate the contributions due for those months. In making these estimates, the Funds averaged the contributions due for the most recent three months for which we have reports, and inflate the result by 10%, rounded to the nearest whole dollar. The Funds used this estimation procedure to estimate the amounts due from Kingsbridge for the months of November, 2007 through and including February, 2008.

15. Pursuant to their Declarations of Trust, the Funds charge 12% interest on delinquent Funds contributions.

16. The Funds Declarations of Trust provide that, in any successful action to collect delinquent contributions, in addition to interest and principal, the Funds shall receive an amount equal to the greater of the interest or 20% of the unpaid contributions.

17. The Funds Declarations of Trust give the trustees the power to conduct payroll audits of participating employers when the trustees deem an audit necessary or advisable.

18. Pursuant to the power granted to them by their respective Declarations of trust, the Greater Funds periodically conduct payroll audits of contributing employers. If, as a result of an audit, the Funds determine that Kingsbridge or any other employer made an overpayment for a particular month, the Funds will give Kingsbridge or any other employer a credit in an amount equal to the overpayment

19. Although the Kingsbridge employees' medical benefits were cut off as of November 5, 2007, if all Benefit Fund delinquencies are paid, including the delinquencies for the months of November, 2007 through February 2008, then benefits will be reinstated retroactively for the Kingsbridge employees and they will be able to

submit for reimbursement medical bills which they incurred during the period November 5, 2007 through February 20, 2008.


TIMOTHY WELLS

Sworn to before me this
15th day of August, 2008


Notary Public

LOTTIE MAE RICHBOW
Notary Public, State of New York
No. 24-3273700
Qualified in Kings County
Commission Expires January 30, 2010